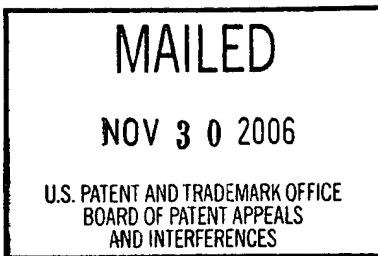


The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES



Ex parte RUSSEL CHARLES DODD

Appeal No. 2006-2346
Application No. 09/931,358
Technology Center 3600

HEARD: November 15, 2006

Before CRAWFORD, GROSS and NAPPI, **Administrative Patent Judges.**

NAPPI, **Administrative Patent Judge.**

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. §134(a) of the final rejection of claims 1 through 9 and 14, which constitute all the claims in the application. For the reasons stated *infra* we affirm-in-part the examiner's rejection of these claims.

Invention

The invention relates to a method of providing customized information to resellers of goods. See page 2 of appellant's specification. Claim 1 is representative of the invention and reproduced below:

1. A method comprising the steps of:
 - a) providing an interface to a plurality of customers, wherein said customers are purchasers of goods for subsequent sale to consumers,
 - b) receiving customer identification information from at least one of said customers, said receiving being accomplished through the use of said interface,
 - c) receiving from at least one of said customers an indication of purchase interest in at least one consumer product, wherein said at least one consumer product is selected by said at least one of said customers from a plurality of consumer products available for sale, wherein the identity of said plurality of consumer products is made known to said plurality of customers through the use of said interface,
 - d) accessing customer information related to said at least one of said customers from a preexisting database,
 - e) providing to said at least one of said customers product information regarding said at least one consumer product through the use of said interface, wherein said product information provided is customized on the basis of said customer information accessed in step (d), and wherein at least some of the product information provided comprises consumer sales projection information calculated with respect to said at least one of said customers.

Reference

The reference relied upon by the examiner is:

Peterson 6,324,522 Nov. 27, 2001 (filed Sep. 15, 1998)

Rejections at Issue

Claims 1 through 9 and 14 stand rejected under 35 U.S.C. § 102(e) as anticipated by Peterson. The examiner's rejection is set forth on page 4 of the final Office action dated Dec. 23, 2004. Claims 1 through 9 and 14 stand rejected under 35 U.S.C. § 103 (a) as being unpatentable over the Peterson. The examiner's rejection is set forth on page 4

of the final Office action dated Dec. 23, 2004.¹ Throughout the opinion we make reference to the briefs, the answer and the Office action for the respective details thereof.

Opinion

We have considered the subject matter on appeal, the rejections advanced by the examiner and the evidence of anticipation and obviousness relied upon by the examiner in support of the rejections. We have likewise, reviewed and taken into consideration, in reaching our decision, appellant's arguments set forth in the briefs along with the examiner's rationale in support of the rejections and arguments in rebuttal set forth in the examiner's answer.

With full consideration being given to the subject matter on appeal, the examiner's rejections and the arguments of appellant and the examiner, and for the reasons stated *infra* we sustain the examiner's rejections of claims 1 through 9 under 35 U.S.C. § 102(e) and 35 U.S.C. § 103(a). However, we will not sustain the examiner's rejections of claim 14 under 35 U.S.C. § 102(e) and 35 U.S.C. § 103(a)

Initially we note that appellant does not separately argue claims 2 through 9, accordingly we group claims 2 through 9 with claim 1 and will discuss claim 14 separately.

On pages 4 through 9 of the brief, appellant presents arguments directed to the proper interpretation of the claim terms "customer" and "consumer." While appellant's arguments on pages 4 through 9 of the brief are directed primarily to the now withdrawn rejection based upon Roberts and Brockman, we will address the issue as it has bearing on the rejections based upon Peterson. In response to these arguments, the examiner adopts the appellant's asserted meanings for these terms. On page 8 of the answer, the examiner finds that the claim term "customer" means: "any purchaser of goods where

¹ We note the appealed final rejection also rejected claims 1-9 and 14 under 35 U.S.C. § 112 and under 35 U.S.C. § 103 as being unpatentable over Roberts and Brockman. However, the examiner states on pages 2 and 3 of the answer all rejections except the rejections relating to Peterson are withdrawn.

such purchaser intends to re-sell such goods to another entity, person, or groups of persons in the course of such customer's business"; and the term "consumer" means: "any purchaser of goods where such purchaser will be the end user of such goods, or is not otherwise engaged in business or practice of sale of such goods to others." The examiner further provides table 1, on page 15 of the answer, which equates the parties in Peterson with the parties claimed. Appellant concedes that as table 1 shows, Peterson teaches parties analogous to the parties claimed. Thus, the issue as to whether Peterson teaches the parties as recited in the claims is not before us as both examiner and appellant are in agreement.

Appellant argues, on page 10 of the brief, that Peterson does not teach or suggest that product information is customized based on customer information and that the information provided comprises consumer sales projections calculated with respect to the customer. Appellant states, on page 10 of the brief, that while Peterson teaches that vendors (admitted to be analogous to claimed customers) communicate information about inventory "[t]here is no indication that the information about the product itself provided **to the vendor** is customized on the basis of **vendor information (or customer information)**." (Emphasis original) Further, appellant asserts, on page 11 of the brief, Peterson provides no indication that the information comprises sales projection information as required by claim 1. Additionally, on page 11 of the brief, appellant argues that the examiner's rejection has essentially "ignored the limitation of calculation, of consumer sales projection information calculated with respect to the customer." Regarding the examiner's obviousness rejection based upon Peterson, appellant argues, on page 12 of the brief, that with the exception of claim 14, the arguments regarding the anticipation rejection also apply to the obviousness rejections.

In response, the examiner states, on page 16 of the answer, that table 2 of the appendix, establishes anticipation. In table 2 of the appendix, on pages 19 and 20 of the answer, the examiner finds that Peterson teaches price information customized based on the consumer ID which meets the claim 1 limitation of "wherein said product information provided is customized on the basis of said customer information accessed in step (d)."

Further, the examiner finds that Peterson teaches “At least some of the product information provided to the system (*e.g.* quantity ordered by the vendor as buyer) is based upon end user sales projection information (the quantity the vendor as buyer believes the consumer as end user will eventually purchase” and that this teaching meets the claim limitation of “wherein at least some of the product information provided comprises consumer sales projection information calculated with respect to said at least one of said customers.” As an alternative, on page 16 of the answer, the examiner applies an obviousness rejection and finds that the limitation of steps of providing product information recited in claim 1 are not dependent upon the content of the information provided. On page 17 of the answer, the examiner states:

it is the Examiner's position that "consumer sales projection information" is non functional descriptive material. At least in claim 1, the "consumer sales projection information" is not in any way functionally related to the method step. Whether the information is "consumer sales projection information" or other information. For this reason, even if the Board reversed the anticipation rejections, the Examiner urges the Board to affirm the obviousness rejections.

Appellant replies, on page 3 of the reply brief, to the examiner’s finding that the, number of units purchased by the vendor (customer) is based upon projected sales, by asserting that the examiner’s rationale, while logical, does not show how Peterson meets the claim limitation of providing to the customer a customized projection of consumer sales calculated for the customer. Further, on page 4 of the reply brief, appellant responds to the examiner’s alternative rationale, that the consumer sales projection information is non functional descriptive material. Appellant argues that the method of the claim “among other steps requires a calculation and requires that the results of this calculation be provided to one [of] the parties necessary for the performance of the method.” Appellant cites several Federal Circuit Cases in which methods which involved calculations were drawn to statutory subject matter.

The appellant’s arguments have not convinced us that both of the examiner’s rationale for rejecting claim 1 are in error. While we are in agreement with appellant that Peterson does not inherently teach providing to the customer consumer sales projection

information as discussed in appellant's specification, we do however find that such information is not functionally related to the claimed method.²

Claim 1 recites in step e) "providing to said at least one of said customers product information regarding said at least one consumer product through the use of said interface, wherein said product information provided is customized on the basis of said customer information accessed in step (d), and wherein at least some of the product information provided comprises consumer sales projection information calculated with respect to said at least one of said customers." Thus, limitation e) of claim 1 recites three types of information. The first type of information (product information) is provided to the customer, assumedly in response to the customer's indication to purchase a selected product in step c), and the information is also customized on the basis of information recited in the prior step d). Step d) recites another, second type of information (customer information), which is stored in a database. Further, limitation e) recites that some of the first information (product information) comprises a third type of information "customer sales projection information calculated with respect to said at least one customer." We hold that the titles for the different types of information, i.e. "customer" and "consumer sales projection" do not import functionality to the data. We hold that claim 1 recites three types of information which are related. The second type of information (customer information) is used to customize the first type of information (product information) and that the third type of information (customer sales projection) is part of the first type of information (product information). We note that there is no claimed method step of calculating, or limitation reciting how the calculation is performed, rather the claim recites that the information (projected consumer sales) is calculated with respect to one of the customers. Thus, we do not find that type of information "consumer sales projection"

² Our reviewing court has stated that "[w]here the printed matter is not functionally related to the substrate, the printed matter will not distinguish the invention from the prior art in terms of patentability." *In Re Nagi* 367 F.3d 1336, 1339, 70 USPQ2d 1862, 1864 (Fed. Cir. 2004), citing *In Re Gulack* 703 F.2d 1381, 217 USPQ 401 (Fed. Cir. 1983).

functionally relates to the claimed method step other than that it is calculated with respect to the second (customer) information.

We find that Peterson teaches a system where the vendor can inquire about purchasing an item, and in response to the inquiry the vendor is provided data including item description, a price quantity etc. See column 28, lines 19 through 26. The vendor also enters an ID, and this ID is then used to access a database which includes among other data the vendor's discount percentage. See column 28, lines 26 through 38. This discount percentage is used to calculate the price quoted to the vendor. Reading the teachings of Peterson on the claim limitations discussed *supra*, we find that information provided in response to the search meets appellant's claimed "product information." We find that Peterson's discount rate meets the claimed customer information as it is information related to a customer from a pre-existing database. Further, we consider Peterson's price to meet appellant's claimed non-functional descriptive information, "consumer sales projection" as it is part of the product information (response to the item inquiry) and is calculated based upon the customer information (discount rate). Accordingly, we find ample evidence to support the examiner's rejections of claim 1 under Peterson. We note that the examiner discusses the claim interpretation of non-functional descriptive material only with respect to the rejections based on 35 U.S.C. § 103, however it is clear from *In Re Nagi* 367 F.3d 1336, 70 USPQ2d 1862 (Fed. Cir. 2004) that the principals also apply to anticipation rejections. Accordingly, we sustain the examiner's rejection of claim 1 and the claims grouped with claim 1, claims 2 through 9, under both 35 U.S.C. § 102 and 35 U.S.C. § 103.

In regards to claim 14, appellant argues, on page 12 of the brief,

Claim 14 expressly requires that the sales projection information is customized on the basis of planned promotional activities with respect to the consumer product. The Final Action takes the primary position that such limitation is inherent by virtue of the product being on sale. This conclusion is not correct, however. An item on sale does not necessarily have **any** planned promotional activity associated with it - much less inherently have a customized calculation made on

the basis of both customer information and promotional activity regarding the product. The Final Action simply dismisses the claim limitations as "nonfunctional descriptive material" while arriving at the summary conclusion that substitution in Peterson et al. of any particular type of information would be obvious. This showing is well short of the requirements showing how the particular relationships among the parties claimed are suggested in Peterson et al.

The examiner responds on page 18 of the answer that the features argued by appellant are not present in the claims.

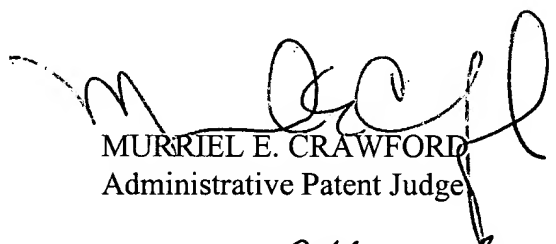
We disagree with the examiner. Claim 14 is dependent upon claim 1 and recites "wherein said sales projection information is customized on the basis of planned promotional activities with respect to said at least one consumer product." As discussed *supra*, we consider the title "sales projection information" imparts no functionality in claim 1. Nonetheless claim 14 further recites that this information is further customized by "planned promotional activities." As discussed *supra* Peterson teaches data that is customized based upon customer information, but we find no disclosure in Peterson which teaches or makes obvious performing a second customization of the data. Accordingly, we will not sustain the examiner's rejections of claim 14.


Conclusion

In summary, we sustain the examiner's rejection of claims 1 through 9 under 35 U.S.C. § 102(e) and 35 U.S.C. § 103(a). However, we do not sustain the examiner's rejection of claim 14 under 35 U.S.C. § 102(e) and 35 U.S.C. § 103(a). The decision of the examiner is affirmed in part.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv).

AFFIRMED-IN-PART


MURRIEL E. CRAWFORD
Administrative Patent Judge


ANITA PELLMAN GROSS
Administrative Patent Judge


ROBERT E. NAPPI
Administrative Patent Judge

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